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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,757	10/15/2001	Dianne D. Mueller	US20010115	3965

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EXAMINER	
CIRIC, LJILJANA V	

ART UNIT	PAPER NUMBER
3753	

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/977,757	MUELLER ET AL.	
	Examiner	Art Unit	
	Ljiljana (Lil) V. Ciric LVC	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *2 Mar 2004 & 30 Jun 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18 and 38* is/are pending in the application.

4a) Of the above claim(s) *none* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18 and 38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-18 and 38* are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *15 October 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This Office action is in response to the replies filed on March 2, 2004 and on 30 June 2004.

2. Claims 1 through 18 and 38 remain in the application. Of these, claims 1 through 18 are all as amended, either directly or indirectly, whereas claim 38 is new.

Response to Arguments

3. Applicant's arguments filed on March 2, 2004 and on June 30, 2004 with respect to the rejection of claims in the instant application under 35 U.S.C. 102(a) based upon a public use or sale of the instant invention as recited in the previous Office action have been fully considered and are persuasive. Also, the examiner has viewed the taped CNBC interview featuring Whirlpool Corporation Chairman and CEO David Whitwam which was submitted by the applicant in response to the examiner's requirement for information; the content of the taped interview supports applicant's arguments that any disclosure relating to the instant invention by Mr. Whitman during the interview was at a conceptual level and thus much less detailed than the scope of the claims of the instant invention; neither Richard Babyak's "Getting Connected Network News" article nor the corresponding taped CNBC interview disclose the instant invention in sufficient detail to be anticipatory. Therefore, in view of the abovementioned arguments as supported by the content of the taped interview, the rejections of claims 1 through 18 as being anticipated under 35 U.S.C. 102(a) and (b) by Richard Babyak's "Getting Connected: Network News" as cited in the previous Office action have been withdrawn.

The remainder of applicant's arguments filed on March 2, 2004 and on June 30, 2004 have been fully considered but are generally not persuasive.

For example, contrary to applicant's arguments, the amendments to claim 8 and claim 9 depending therefrom have failed to obviate the indefiniteness of these claims due to a broad range or limitation together with a narrow range or limitation falling within the broad range or limitation in the same claim as explained in greater detail below in the corresponding section of this Office action. New claim 38 is similarly rendered indefinite as also explained in greater detail below.

First of all, in response to applicant's argument that the *Clark et al.* reference fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., circulating cooled air through a refrigerated air path to the cooking chamber to prevent spoilage of the food item) are not recited in the previously rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Second of all, in response to the following additional traversal of applicant's arguments relating to the applicability of the *Clark et al.* reference as prior art under 35 U.S.C. 103(a) corresponding to claims 1 through 7 and 10 through 18, the examiner hereby notes that the claims in a pending application should be given their *broadest* reasonable interpretation. See *In re Pearson*, 181 USPQ 641 (CCPA 1974). In contrast, applicant's argument that *Clark et al* does not teach nor suggest that cooled air is circulated "through a refrigerated air path to the cooking chamber" appears to be based on an overly narrow interpretation of both the pending claims and of the prior art reference. As noted in greater detail below, *Clark et al.* [especially see Figures 2 and 4], for example, discloses circulating cool air through a cool air duct 80 extending between the refrigeration module or unit 70 and the cooking chamber or oven 28 and readable on the refrigerated air path as recited in the claims of the instant application, with the air-filled

and thus inherently insulated housing surrounding the evaporator 78 forming the cool air duct or refrigerated air path 80 [especially see Figure 4].

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims *patentably* distinguishes them from the references.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the *patentable* novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Specification

4. The abstract of the disclosure is objected to because it fails to avoid the form and legal phraseology often used in patent claims, such as "the method comprising". Correction is required. See MPEP § 608.01(b).

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there appears to be no antecedent basis for the term "refrigerated air path" as newly recited in the claims.

Claim Rejections - 35 U.S.C. § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 8, 9, and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly

set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, each of claims 8 and 38 recites, for example, the broad recitation of two cooking cycle parameters, and the claims also recites the two cooking cycle parameters as being an End Time corresponding to the time of day that step B is to be completed and a Bake Time corresponding to the length of time for cooking the food item which constitutes the narrower statement of the range/limitation.

The intended meaning and scope of the limitations "by cycling the heating element for the Bake Time" [claim 38, line 19] are not clear as written, thus rendering the claim indefinite.

Claim Rejections - 35 U.S.C. § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1 through 7 and 10 through 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Clark et al.(of record)*.

Clark et al. discloses the inventive method essentially as claimed, including operating a pre-programmable refrigerated oven such that food is selectively cooked, cooled, and/or warmed therein using a remote control, as needed. *Clark et al.* [especially see Figures 2 and 4] also, for example,

discloses circulating cooled air through a cool air duct 80 extending between the refrigeration module or unit 70 and the cooking chamber or oven 28 and readable on the refrigerated air path as recited in the claims of the instant application, with the air-filled and thus inherently insulated housing surrounding the evaporator 78 forming the cool air duct or refrigerated air path 80 [especially see Figure 4]. Also see column 5, lines 16-21.

While *Clark et al.* suggests that the initiation of the cooling step be based on the temperature, it does not specify that this cooling necessarily be delayed until the cooking temperature cavity is below a predetermined threshold temperature.

Nevertheless, it is known in the art of cooking and food preparation, and suggested by *Clark et al.*, that warm foods need to be kept above about 170 degrees Fahrenheit in order to prevent spoilage at warm/hot temperatures, and that cold foods need to be kept below about 45 degrees Fahrenheit in order to prevent spoilage at cool/cold temperatures. See column 8, lines 44-48 and Figures 7 of *Clark et al.*, for example.

Given this, and given that energy conservation is a consumer priority, it would have been obvious to one skilled in the art at the time of invention to modify the process disclosed by *Clark et al.* such that cooling of warm foods stored in the inventive refrigerator oven NOT be initiated until the temperature of the warm foods drops below the safe warm/hot temperature of about 170 or 175 degrees Fahrenheit corresponding to the "predetermined threshold temperature" as recited in base claim 1 in order to keep the food from spoiling without expending energy unnecessarily to cool the food until it needs to be cooled to prevent spoilage.

Allowable Subject Matter

10. Claim 8 and 9 would be allowable if rewritten or amended, without broadening, to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. Claim 38 would be allowable if rewritten or amended, without broadening, to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Conclusion

12. The following additional prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Drucker, Ballentine, Pettinato et al., Caridis et al., Otto, Blake, Smith, and Wu each discloses a food processing appliance and/or method, and furthermore specifies various cooking temperature ranges, including the usual minimum temperatures required to kill salmonella bacteria. McKee et al., Fritsch et al., Yun, Brummett et al., and Perrine all disclose various methods and corresponding convection-type apparatus designed for cooling and/or heating/cooking/thawing food.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (571) 272-4909.

While she works a flexible schedule that varies from day to day and from week to week, Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene, can be reached at (571) 272-4930.

lvc

November 26, 2004

LJILJANA V. CIRIC
PRIMARY EXAMINER
ART UNIT 3753